



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2  
290 BROADWAY  
NEW YORK, NY 10007-1866

JUL 31 2013

**PROMPT REPLY NECESSARY**  
**CERTIFIED MAIL: RETURN RECEIPT REQUESTED**  
**7001 0320 0004 7789 3197**

Newark Housing Authority  
500 Broad Street  
Newark, NJ 07102  
Attn: Mr. Keith Kinard,  
Executive Director

Re: Request for Information Pursuant to Section 104 of CERCLA  
Barth Smelting Site, Newark, Essex County, New Jersey

Dear Mr. Kinard:

The United States Environmental Protection Agency ("EPA") is charged with responding to the release or threatened release of hazardous substances, pollutants, and contaminants into the environment and with enforcement responsibilities under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §9601, et seq. (also known as the "Superfund" law). For your information, a copy of the Superfund law may be found at [www.epa.gov/superfund/action/law/index.htm](http://www.epa.gov/superfund/action/law/index.htm).

This letter seeks the cooperation of the Newark Housing Authority ("NHA ") in providing information and documents relating to the Barth Smelting Superfund Site (the "Site"). The Site includes the real property located at 99 Chapel Street ("99 Chapel Street property") and a portion of the real property on which the Newark Housing Authority's Millard E. Terrell Homes is located at 59-97 Chapel Street ("Terrell property") in Newark, Essex County, New Jersey. EPA believes that the NHA is the current owner of the Terrell property and, as such, EPA is sending this Request for Information to the NHA. EPA encourages your organization to give this letter your immediate attention. A complete and truthful response should be provided to the attached Request for Information **within 30 days** of your receipt of this letter.

EPA has documented the release and threatened release of hazardous substances into the environment at the Site. The Site has had many uses over the years including various manufacturing and industrial operations and is currently in use today. During its history, the Site was utilized to manufacture batteries, soap and metals. The 99 Chapel Street property is currently being used by business(es) that maintain and repair containers and commercial and industrial machinery. Our records indicate that the 99 Chapel Street property was also the location of the former Barth Smelting & Refining Works Company that began operating there at about the same time the NHA acquired the Terrell property. According to historical records, the New Jersey Zinc & Iron Company, a former primary zinc smelter, conducted operations on the Terrell property and on a portion of the 99 Chapel Street property. EPA is currently investigating the elevated levels of lead found on the Terrell property and the possible sources of that lead. EPA is seeking your organization's assistance to gather information in this regard.

While EPA seeks the cooperation of the NHA in this investigation, compliance with this Request for Information is required by law. When your organization has prepared its response to the Request for Information, please sign and have notarized the enclosed "Certification of Answers to Request for Information", and return that Certification to EPA along with your organization's response. Please note that false, fictitious, or fraudulent statements or representations may subject your organization to civil or criminal penalties under federal law. In addition, Section 104 of CERCLA, 42 U.S.C. Section 9604, authorizes EPA to pursue penalties for failure to comply with a Request for Information.

Some of the information EPA is requesting may be considered by the NHA to be confidential. Please be aware that you may not withhold the information upon that basis. If you wish EPA to treat the information confidentially, your organization must advise EPA of that fact by following the procedures described in the Instructions section which follows this letter, including the requirement for supporting your claim for confidentiality.

If you have information about other parties who may have information which may assist the Agency in its investigation of the Site or may be responsible for the contamination at the Site, that information should be submitted within the time frame noted above.

Please note that if after submitting your response you obtain additional or different information concerning the matters addressed by our Request for Information, it is necessary that you promptly notify EPA. This Information Request is not subject to the approval requirements of the Paperwork Reduction Act of 1980, 44 U.S.C. ' 3501 et seq.

See the enclosed Instructions for information on how to respond to the enclosed questions and/or information requests. Your organization's response to this Request for Information should be mailed to:

Ms. Bonnie Hriczko  
Removal Action Branch  
U.S. Environmental Protection Agency, Region II  
2890 Woodbridge Avenue, Bldg 205 (MS-211)  
Edison, New Jersey 08837

A copy of your reply should be sent to:

Mr. William J. Reilly, Esq.  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region II  
290 Broadway, 17th Floor  
New York, New York 10007

If you have any questions regarding this Request for Information, or would like to discuss this matter with EPA, please contact Ms. Hriczko at (732) 321-6647. Inquiries from attorneys should be addressed to Mr. Reilly at (212) 637-3154.

We appreciate and look forward to your prompt response to this matter.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Nicoletta DiForte".

Nicoletta DiForte, Senior Enforcement Policy Advisor  
Emergency and Remedial Response Division

Enclosure

## **Instructions for responding to request for information**

### **A. Directions**

1. A complete and separate response should be given for each question. For each question contained in this letter, if information or documents responsive to this information request are not in your possession, custody, or control, please identify the person(s) from whom such information may be obtained.
2. Identify each answer with the number of the question and the subpart to which it responds. For each document produced in response to this Request for Information, indicate on the document, or in some other reasonable manner, the question to which it applies.
3. Provide responses to the best of your ability, even if the information sought was never put down in writing or if the written documents are no longer available. Consult with all present and past employees and agents of your organization whom you have reason to believe may be familiar with the matter to which the question pertains.
4. In answering each question, identify each individual and any other source of information (including documents) that were consulted in the preparation of the response to the question.
5. If additional information or documents responsive to this Request becomes known or available to you after you respond to this Request, EPA hereby requests pursuant to CERCLA Section 104(e) that you supplement its response to EPA within 30 days from the date such information or documents became available to it.
6. If you have reason to believe that an individual other than one employed by your organization may be able to provide additional details or documentation in response to any question, state that person's name, last known address, phone number, and the reasons for your belief.
7. If a document is requested but not available, state the reason for its unavailability. To the best of your ability, identify the document by author, date, subject matter, number of pages, and all recipients of the documents with their addresses.
8. If anything is omitted from a document produced in response to the Request for Information, state the reason for, and the subject matter of, the omission.

9. If you cannot provide a precise answer to a question, please approximate but, in any such instance, state the reason for your inability to be specific.
10. Whenever this Request for Information requests the identification of a natural person, or other entity, the person or entity's full name and present or last known address also should be provided.
11. Confidential Information The information requested herein must be provided even though your organization may contend that it includes confidential information. Your organization may assert a confidentiality claim covering part or all of the information requested, pursuant to Sections 104(e)(7)(E) and (F) of CERCLA, U.S.C. §§ 9604(E)(7)(e) and (F), Section 3007 (b) of RCRA, 42 U.S.C. §6927(b), and 40 C.F.R. §2.203(b).

If you make a claim of confidentiality for any of the information you submit to EPA, you must prove that claim. For each document or response you claim is confidential, you must separately address the following points:

1. the portions of the information alleged to be entitled to confidential treatment;
2. the period of time for which confidential treatment is desired (e.g., until a certain date, until the occurrence of a specific event, or permanently);
3. measures taken by your organization to guard against the undesired disclosure of the information to others;
4. the extent to which the information has been disclosed to others, and the precautions taken in connection therewith;
5. pertinent confidentiality determinations, if any, by EPA or other federal agencies, and a copy of any such determinations or reference to them, if available; and
6. whether you assert that disclosure of the information would likely result in substantial harmful effects on your organization's position, and if so, what those harmful effects would be, why they should be viewed substantial, and an explanation of the causal relationship between disclosure and such harmful effects.

To make a confidentiality claim, please stamp, or type, "confidential" on all confidential responses and any related confidential documents. Confidential portions of otherwise non-confidential documents should be clearly identified. You should indicate a date, if

any, after which the information need no longer be treated as confidential. Please submit your response so that all non-confidential information, including any redacted versions of documents are in one envelope and all materials for which you desire confidential treatment are in another envelope.

All confidentiality claims are subject to EPA verification. It is important that your organization satisfactorily shows that it has taken reasonable measures to protect the confidentiality of the information and that it intends to continue to do so, and that it is not and has not been obtainable by legitimate means without your consent. Information covered by such claim will be disclosed by EPA only to the extent permitted by CERCLA Section 104(e). If no such claim accompanies the information when it is received by EPA, then it may be made available to the public by EPA without further notice to your organization.

## **B. Definitions**

1. The term "person" shall include any individual, firm, unincorporated association, partnership, corporation, trust, non profit organization or other entity.
2. The term "Site" or "Barth Site" shall mean the property located at 99 Chapel Street, Newark, NJ, being the same location of the Barth Smelting Superfund Site, which encompasses the former Barth Smelting & Refining Works location and the surrounding contaminated. A map of the Site has been included as Appendix A.
3. The term "the Organization" or "You" or "Your" or "NHA" shall mean the Newark Housing Authority and its, divisions, branches, officers, managers, employees, contractors, trustees, partners, assigns or agents.
4. The term "waste" or "wastes" shall mean and include trash, garbage, refuse, by-products, solid waste, hazardous waste, hazardous substances including, pollutants, or contaminants, whether solid, liquid, or sludge, including but not limited to containers for temporary or permanent holding of such wastes.
5. The term "hazardous substances" shall have the same definition as that contained in Section 101(14) of CERCLA, and includes any mixtures of such hazardous substances, products or other nonhazardous substances.
6. The term "industrial waste" shall mean any solid, liquid or sludge or any mixture thereof which possesses any of the following characteristics:
  - a. it contains one or more hazardous substances (at any concentration) as defined in 42 U.S.C. Section 9601(14);

- b. it is a "hazardous waste" as defined in 42 U.S.C. Section 6903(5);
  - c. it has a pH less than 2.0 or greater than 12.5;
  - d. it reacts violently when mixed with water;
  - e. it generates toxic gases when mixed with water;
  - f. it easily ignites or explodes;
  - g. it is an industrial waste product;
  - h. it is an industrial treatment plant sludge or supernatant;
  - i. it is an industrial byproduct having some market value;
  - j. it is coolant water or blowdown waste from a coolant system;
  - k. it is a spent product which could be reused after rehabilitation; or
  - l. it is any material which you have reason to believe would be toxic if either ingested, inhaled or placed in contact with your skin.
7. The term "pollutant or contaminant" shall have the same definition as that contained in Section 101(33) of CERCLA, 42 U.S.C. Section 9601(33), and includes any mixtures of such pollutants or contaminants with any other substances. Petroleum products mixed with pollutants and contaminants are also included in this definition.
8. The term "identify" means, with respect to a natural person, to set forth the person's name, present or last known employer and business address and business telephone number, present or last known home address and home telephone number, and present or last known job title, occupation, position or business.
9. With respect to a corporation, partnership, business trust or other association or business entity (including a sole proprietorship) the term "identify" means to provide its full name, address, and affiliation with the individual and/or company to whom/with this request is addressed.
10. The term "document" and "documents" includes any written, recorded computer generated, or visually or aurally reproduced material of any kind in any medium in your possession, custody, or control or known by you to exist, including originals, all prior drafts, and all non-identical copies.
11. The term "material" or "materials" shall mean any and all objects, goods, substances, or matter of any kind, including but not limited to wastes.
12. The term "real property" shall mean and include, but not be limited to the following: land, buildings, a house, dwelling place, condominium, cooperative apartment, office or commercial building, including those located outside the United States.

13. The term "release" shall mean any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into the environment, and other closed receptacles containing any hazardous substance or, pollutant, or contaminant.
14. All terms not defined herein shall have their ordinary meaning, unless such terms are defined in CERCLA or RCRA, in which case the statutory definitions shall apply.



### **REQUEST FOR INFORMATION**

1. State the NHA's full legal name and legal mailing address.
2. EPA believes that NHA currently owns the real property identified as the Millard E. Terrell Homes ("Terrell Homes"), located at 59-97 Chapel Street, (Block 2442, Lot 1, Newark, Essex County, New Jersey (the "Property"))? Please answer the questions below:
  - a. If NHA isn't the name of the current owner of the property, then specify the actual name of the property owner.
  - b. Provide information and all relevant information on NHA's acquisition of title including a copy of the deed.
  - c. Was the property part of a bigger parcel that was subdivided? If yes, name the parties who were part of the bigger parcel that was subdivided. Describe how the subdivision occurred and provide all relevant documentation.
3. Describe your property at the time it was acquired. Were there any businesses at that location prior to NHA's ownership of the property? If known, provide the name(s) of the prior property owner(s) and provide any documentation related to their ownership. Describe the prior operations on the property, if known and provide documentation related to any prior operations on the property. Was or is there a relationship with any of the prior owner(s)/operator(s) of the property? If so, please describe in detail what that relationship is/was?
4. Did NHA ever perform a Phase 1 Environmental Site Assessment ("Phase 1") or any other type of environmental assessment on your property prior or any time after it acquired ownership? If so, please provide the details of the Phase 1 or other environmental assessment and provide copies of all of the related documents. Are you aware of any other previous Phase 1's or environmental assessments that have occurred on the property? If so, provide the details of those other environmental assessments and provide copies, if available.
5. Describe in detail any earth moving activities that have occurred on your property during and prior to your ownership and the locations of those activities. Have any new fences or structures been erected on your property during and prior to your ownership? If yes, describe in detail what all of those construction activities were and where and how the soil was moved on the property. Provide all documents related to all of these construction activities.

6. Provide any lease agreements and/or property relationship documents during your ownership of the property.
7. To your knowledge were the prior owner(s)/operator(s) of your property in the metals processing or refining business? If known, describe in detail what those prior operations were on the property and when they occurred. Do you have any knowledge of the Barth Smelting & Refining Works, the General Lead Batteries Company or the New Jersey Zinc Company operations at or adjacent to your property? If yes, then provide all information you have regarding these entities and their occupation of your property or adjacent locations. Please provide all relevant documentation.
8. Describe in detail what condition these entities left their property(ies) in after they vacated them, including but not limited to, any waste products, containers of product or waste chemicals and contaminated soils. Describe any other conditions that may have been deemed hazardous to the area residents. Provide all information and documentation you have with regard to the history of environmental contamination on yours and adjacent properties.
9. To your knowledge, describe the nature of any businesses that are currently conducting operations on the Barth Site and if they involve any earth moving activities. If the nature of the current operations on the Barth Site has changed over the years, please so indicate and describe the various business activities in which the companies have been involved
10. State whether any business records of the prior owner(s)/operator(s) of your property exist. If the answer is yes, state the location of these records and produce:
  - a. All documents relating to the disposal of any wastes; and
  - b. All documents relating to the disposal of any hazardous substances, hazardous waste, or solid waste at the Site.
  - c. All documents related to the activities on-site that may have lead to the production of wastes that may have contaminated your property.
12. Identify any persons who concurrently with the owner/operator exercised actual control or who held significant authority to control activities on your property during and prior to your ownership. In addition, identify:
  - a. Partners or joint venturers;

- b. Any contractor, subcontractor, or licensor with any presence or activity on your property; (service contractors, remediation contractors, management and operator contractors, licensor providing technical support to licensed activities, construction contractors, heavy equipment operators);
  - c. Any person currently or previously subleasing land, equipment, or space on your property;
  - d. Utilities, pipelines, railroads, and any other person with activities and/or easements regarding your property;
  - e. Major financiers and lenders;
  - f. Any person who exercises or exercised actual control over any activities or operations on your property;
  - g. Any person who held or holds significant authority to control any activities or operations on your property;
  - h. Any person who had or has a significant presence or who conducted significant activities on your property.
  - i. Government entities that had proprietary (as opposed to regulatory) interest or involvement with regard to the current or previous activities on your property.
13. Provide all available reports, information or data related to soil, water (ground and surface), or air quality and geology/hydrogeology prior to or during your ownership of your property. Provide copies of all documents containing such data and information, including both past and current aerial photographs as well as documents containing analysis or interpretation of such data.
14. Identify all known prior owners/operators of your property, including lessors, of the property. For each such operator, further identify:
- a. The dates of operation;
  - b. The nature of prior operations at your property;
  - c. All evidence that they controlled access to your property; and
  - d. All evidence that a hazardous substance, pollutant, or contaminant was released or threatened to be released at or from your property and/or its solid waste units during the period that they were operating the Site.

15. Please provide copies of all insurance policies and indemnification agreements held or entered into by the NHA that arguably could indemnify you against any liability which you may be found to have under CERCLA for releases and threatened releases of hazardous substances, pollutants, or contaminants on your property. In response to this request, please provide not only those insurance policies and agreements which currently are in effect, but also those which were in effect during the entire period of your ownership of your property. For any policy that you cannot locate or obtain, provide the name of the carrier, years in effect, nature and extent of coverage, and any other information you have.
16. For each legal action brought against current or prior property owners, tenants, or site operators/managers on your property regarding operations, permitting, or environmental matters, provide:
  - a. The caption name, jurisdiction, and docket number (e.g., U.S. v. Owner (D.N.H. 92-003));
  - b. The date such action was initiated;
  - c. The names of parties to the action; and
  - d. The final disposition or current status of the action.
17. Identify all individuals with knowledge of facts relating to the responses provided to this Request for Information. Identify each individual who assisted or was consulted or who answered on behalf of the NHA in the preparation of its response to this Request for Information, and specify the question with which each person assisted in responding.
18.
  - a. Do you have any additional information or documents that may help EPA identify other parties that may have been the source of, or otherwise responsible for, the hazardous substances or industrial wastes that came to be located on your property? If so, please provide that information and those documents and identify the source(s) of your information.
  - b. In addition, identify all individuals (other than those identified in your response to Question 17.) who may have information or documents relating to the generation, handling, storage, transportation, or disposal of the hazardous substances or industrial wastes that came to be located on your property.

## Appendix A

### Barth Smelting Site map

- Shaded red area represents the Barth Smelting Site



**CERTIFICATION OF ANSWERS TO REQUEST FOR INFORMATION**  
**Barth Smelting Site, Newark, Essex County, New Jersey**

State of \_\_\_\_\_:

County of \_\_\_\_\_:

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document (response to EPA Request for Information) and all documents submitted herewith, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete, and that all documents submitted herewith are complete and authentic unless otherwise indicated. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment. I am also aware that I am under a continuing obligation to supplement my response to EPA's Request for Information if any additional information relevant to the matters addressed in EPA's Request for Information or my response thereto should become known or available to me.

\_\_\_\_\_  
NAME (print or type)

\_\_\_\_\_  
TITLE (print or type)

\_\_\_\_\_  
SIGNATURE

Sworn to before me this  
day of \_\_\_\_\_, 2013

\_\_\_\_\_  
Notary Public